

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

Wisconsin Resources Protection
Council, Center for Biological
Diversity, and Laura Gauger,

Plaintiffs,

Case No: 11-cv-45

v.

Flambeau Mining Company,

Defendant.

**DECLARATION OF STEPHEN V. DONOHUE IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Stephen V. Donohue declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I make these statements based on personal knowledge and experience.

BACKGROUND, EXPERIENCE AND EXPERTISE

2. I have been employed by Foth Infrastructure & Environment and Foth & Van Dyke (collectively “Foth”) since 1990. I am currently employed at Foth as a Director/Associate. I have held that position since 2007. Prior to that, I was employed by Foth as a Senior Project Manager from 1997 until 2007.

3. I am a licensed Professional Hydrologist in the State of Wisconsin and have acted as a consultant to Flambeau Mining Company (“Flambeau”) since the mid-1990s. Foth has acted as a consultant to Flambeau since the late 1980s. My professional work experience at the Flambeau mine site has included evaluating environmental reclamation and remediation activities and monitoring data related to soils and both

surface water and groundwater hydrology, including but not limited to, such activities related to the Industrial Outlot.

4. I hold a Master's Degree in Soil Science (soil physics) from the University of Wisconsin-Madison (1990) and a Bachelor's Degree in Natural Science from the University of Wisconsin-Madison (1986).

5. I am a registered/certified Professional Hydrologist by both the State of Wisconsin (2-111) and the American Institute of Hydrology (05-H-1652). I have over 20 years of professional experience and expertise in permitting complex metallic mining projects. I have managed projects integrating environmental permitting, mine closure, engineering feasibility studies, and environmental impact analysis. Part of my responsibilities often includes significant public involvement through multi-party meetings with public interest groups and regulatory agencies. I am also routinely involved in educating state and federal legislators. I have been appointed by Wisconsin Governors Thompson and Doyle to the Wisconsin Examining Board of Professional Geologists, Hydrologists, and Soil Scientists. I was also a past Chairperson of the Hydrology Section and the Joint Board.

6. Prior to preparing this Declaration, I reviewed the history of the Flambeau Mine project as it relates to permits issued for the project, storm water management practices that were implemented per the conditions of the permits, reclamation of the site, remediation activities at the Industrial Outlot, and monitoring data collected at the Flambeau mine site and Rusk County.

7. Flambeau owned and operated a metallic mine known as the Flambeau Mine ("Mine"), along with related facilities, on its property located at N4100 Highway 27, Ladysmith, Wisconsin. Mining of the Site was undertaken and completed pursuant to

a mining permit (“the Mine Permit”) issued by the Wisconsin Department of Natural Resources (“WDNR”) in 1991. The Mine has been reclaimed pursuant to the Mine Permit as modified on July 30, 1998 and FMC received a Certificate of Completion (“COC”) pursuant to Wis. Stat. § 293.63 for all of the mine except for approximately 32 acres that includes 28 acres known as the “Industrial Outlot” or “Copper Park Business and Recreation Area.” A COC signifies that the Mine operator has fulfilled its duties under the reclamation plan as to that area. Flambeau continues to own the property, including the Industrial Outlot. The Industrial Outlot is leased by Ladysmith Community Industrial Development Corporation. Photographs of the Flambeau Mine before mining, during operation and after reclamation are attached hereto as Exhibits 1 through 3.

8. The Mine was an open pit mine from which Flambeau extracted gold, silver, and copper from 1993 to 1997. In 1997 active mining operations ceased. Beginning in 1996, the Mine’s open pit was backfilled, and this was completed in 1997.

9. Flambeau constructed and operated a “Surge Pond” approximately 0.9 acres in size. This Surge Pond was part of Flambeau’s on-site wastewater treatment system that was in place and operational from 1993 to 1998.

10. In 1998, following the cessation of active mining operations and as part of the reclamation of the facility, Flambeau created a storm water detention basin called a “Biofilter” approximately 0.9 acres in size in the area of the former Surge Pond.

11. The Biofilter is located in the Industrial Outlot. The Industrial Outlot is located immediately to the south of the backfilled mine, and includes various buildings, facilities, and structures including an administrative office and laboratory; recreational facilities; Flambeau’s former wastewater treatment building; and a parking area. A

photograph which delineates the approximate area of the Industrial Outlot is attached hereto as Exhibit 4.

12. The Biofilter's "watershed" is approximately 21 acres and lies entirely within the Industrial Outlot. The Biofilter was designed to collect storm water from single rainfall events ranging from one to 100 years in occurrence and was seeded and planted with specific native vegetation intended to filter sediment and nutrients in storm water runoff. Runoff from rainfall that lands within this watershed is directed to flow into the Biofilter where it is collected, filtered and detained. A figure which depicts the Flambeau Mine Site, the Industrial Outlot, and the Industrial Outlot watershed is attached hereto as Exhibit 5.

13. The Biofilter has an area approximately thirty feet long that is lower than the surrounding berm and allows storm water runoff to overflow when it exceeds the holding capacity of the Biofilter. This area is known as the "Biofilter Outlet." The storm water runoff and rainwater collected in the Biofilter overflows through the Biofilter Outlet into an adjacent wetland when the water level in the Biofilter exceeds the height of the berm at the Biofilter Outlet.

FLAMBEAU MINE PROJECT STORM WATER MANAGEMENT

Construction, Operations and Reclamation.

14. The formal reclamation of the Flambeau mine began during the fall of 1996 with the partial backfilling of the east end of the pit. The pit was totally backfilled during 1997. Final surface grading, topsoiling, seeding and fertilizing of the site was generally completed in 1998. Woody plants (*e.g.*, trees) were planted during 1999. Reclamation activities were performed in accordance with approved detailed plans submitted to and approved by the WDNR.

15. Pursuant to the Mining Permit, Flambeau also completed additional extensive remediation projects on the site which it undertook in 2004 and 2006 to address environmental issues identified as a result of monitoring at the site, including the monitoring of the biofilter system. As a result, several thousand tons of material were excavated from the mine site and additional areas in the Industrial Outlot were capped, covered with topsoil, regraded and re-vegetated. In addition, asphalt was placed on 2.2 acres of parking area in the Industrial Outlot. The remediation activity undertaken in 2006 was completed on June 30, 2006.

16. Since completion of the remedial actions, all storm water flowing to the inlet of the biofilter is derived from storm water contact with natural materials such as vegetated native topsoil, the paved parking lot and roads, or limestone drainage ditch. Documented remediation activities substantiate that storm water flowing into and from the biofilter does not contact any overburden raw material, intermediate product (such as crushed ore), finished product, by-product or waste material at the Flambeau mine. All of these materials were either removed, isolated from contact with storm water, or never existed at the site.

17. As a result of the above reclamation and remediation activities, any storm water overflow from the biofilter does not come into contact with any overburden, raw material, intermediate product, finished product, byproducts or waste material located at the Flambeau Mine. Therefore, any metals, such as copper, iron and zinc present in any storm water overflow from the biofilter during this period of time is not derived from these materials.

A handwritten signature in blue ink, appearing to read "S. V. Donohue", is written above a horizontal line.

Stephen V. Donohue

Date: November 21, 2011



EXHIBIT

1



EXHIBIT

2



EXHIBIT

3



EXHIBIT

4



NOTES:
1. 2010 18-inch resolution imagery courtesy of Wisconsin Regional Orthophotography Consortium downloaded from WisconsinView.com
2. Horizontal datum based on NAD 1983. Horizontal coordinates based on Wisconsin State Plane North (Feet).

- LEGEND**
- | | |
|------------------------------|----------------------------|
| Intermittent Stream | Wetland Boundary |
| Outlet Watershed | Biofilter Boundary |
| Reclaimed Flambeau Mine Area | Industrial Outlot Boundary |
| Flambeau Project Area | |



Foth Infrastructure & Environment, LLC			
REVISED	DATE	BY	DESCRIPTION
CHECKED BY: SVF		DATE: NOV. '11	
APPROVED BY: SVD1		DATE: NOV. '11	
APPROVED BY:		DATE:	

FLAMBEAU MINING COMPANY

FIGURE 2
EXISTING RECLAIMED MINESITE
AND 26.5 ACRE INDUSTRIAL OUTLOT

Scale: 0 250 500 Feet

Date: NOVEMBER, 2011

Prepared by: DAT

Project No: 08F777

EXHIBIT

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